

From: Daniel A. Lorca-Martinez
To: Microsoft ATR
Date: 1/28/02 6:27am
Subject: Microsoft Antitrust Trial

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Dear Sir or Madam:

Prior to relating my thoughts on the case at hand, I would like to disclose that I am very minor shareholder of Apple Computer, Inc., one of Microsoft's competitors.

On Previous Actions:

I would like to start out by recalling that Microsoft has been convicted of illegal business practices more than once. In 1995, I believe, they reached a settlement with the government, only to circumvent the sanctions imposed.

My fear is that this will happen again. Microsoft literally drove Netscape-a company that once was a corporate giant-out of business overnight. Once they gave away their browser, there was little incentive for individuals to purchase the competing product from Netscape. Regardless of what can be said about AOL purchasing Netscape being proof that the computer industry is fluid and can fight Microsoft, that deal never would have happened if Microsoft hadn't reduced Netscape's business to dust. It also would have been impossible for any other company to give away its software-and this goes to the heart of why Microsoft has been found guilty of abusing its monopoly.

Many people equate this trial to IBMs antitrust trial. I would like to point out that yes, there are some similarities on the surface-but they end there.

- 1) IBM was not purchasing most competing products.

To this day, Microsoft has yet to truly create innovative products in-house aside from Excel and Word. Powerpoint, Access, FoxPro, and even Internet Explorer, the reason behind this trial, were purchased. (Taken from an Amicus Brief from the trial presided by Judge Jackson that specified which products were purchased.)

- 2) IBM lost its monopoly position in the computer market due to many factors, in part arrogance, lack of vision, and lack of drive.

Microsoft, as a company, is very smart and nimble. They have learned from the mistakes or their predecessors, including this major oversight of IBM's. Microsoft is being very careful about being caught with its proverbial pants down-and in fact have gotten into almost every single major business development early on, from cable news to set-top boxes for TV (even with latecomers, such as its entertainment console, the X-Box).

The computer industry, on its own, would be flexible enough to compete with Microsoft on the basis of merit and price. The problem is that Microsoft is very quick to see such competitors early on, and either buys them out or drives them out of business with its guerrilla marketing tactics (the FUD factor: Fear, Uncertainty, and Doubt). This can be seen prominently, for example, when Microsoft-influenced people state that Apple could go out of business, or that Linux can't last long because it is a free operating system.

On the "Freedom to Innovate":

Someone on the internet suggested a great solution that in addition to any other penalty, Microsoft should be prohibited from using patents acquired from other companies for a period of three years. This would keep them *really* innovating, as opposed to innovating by

acquisition.

Sometimes, innovation by Microsoft is truly a bad thing. As a company, it has the habit of "embracing and extending" open standards, such as HTML and Java. Java is a Sun trademark and, they sued Microsoft when it included Java with Microsoft's modifications without mentioning the difference. Sun won, and Microsoft had to issue a recall and pull the product from the shelves. The problem is that other standards like HTML don't have the high priced lawyers that Sun does. My solution to that would be to have Microsoft list products that are, for example, HTML compatible, if and only if the standard is followed to the letter. No extensions to HTML, no extensions to Java-just the pure, unadulterated standard.

On the matter of Remedy:

It is imperative to see that desperate times call for desperate measures. Microsoft has fought tooth and nail against the possibility of being broken up. As a company, it has argued that severe limits to its freedoms would be detrimental to them, the economy, and indeed the world. The problem is that yes, they are very important and determine the outcome of much that goes on in the computer industry. They have abused their power though. Most importantly, weak antitrust remedies will not help-Microsoft will find a way around them. Where some litigation has stopped companies from abusing monopoly power, Microsoft has demonstrated that nothing short of completely and forcibly changing their business tactics will help. Yes, this may mean that certain otherwise unreasonable penalties will be applied to Microsoft. Unfortunately, the court, on behalf of the American people, has no other recourse-minor fines and weak penalties will not curb Microsoft's corporate behavior.

The solution proposed by Judge Jackson of dividing the company into two entities was an ideal solution. It would allow the company to do everything it was doing before, but without the strongarm tactics to make up for the software's shortcomings. If Microsoft's applications (Office, Explorer, Access, etc) was split from its Operating System division (XP, 2000, NT, etc), there would be a plethora of offerings that would become available. The Linux operating system has gained much ground-and while its users enjoy free software, if Microsoft offered its software for Linux at the same price point as its offerings in Windows, it would make a profit. One of the main reasons why this is still not being done is that making Linux a viable platform (by offering Office, for example) would undermine Windows's standing as the predominant operating system. As a separate company, the MS Applications Company would be free to offer what they like to whomever they like. Then Windows would be free to compete on its innovative qualities on equal ground.

Alternatively, it would be possible to have Microsoft license the software (and APIs) it did not want to make for alternative platforms, such that an independent developer would be able to make an official Office package that is guaranteed to be compatible with its Windows counterpart. Because it is licensed, Microsoft would be guaranteed a profit. No loss would occur, since they would not have to make any investment. If the product fails, they don't have to worry about it either.

On Anti-Competitive Practices:

It is a matter of record that Microsoft has used restrictive contracts and licenses to force partners to exclude competitors. If Gateway preinstalled the Netscape browser and placed the Navigator

icon on the Windows 95 desktop the license price of Windows went up. This was used as an effective tool to weaken Netscape's position in the OEM market.

Recently, Microsoft's Software Licensing Agreements (I believe in Visual C++ 7) have started including a clause that prohibits the use of its software compilers to create freely distributable software and source code under the GNU Public License. This is a significant blow to the community that believes in free software. Most importantly, there is no reasonable explanation to include such a clause other than specifically to hurt the free software movement.

It is widely known that Microsoft has inserted code into their various software products to slow or even downright disable competing software. Microsoft Office version 4 for the Macintosh took roughly 4-10 times longer to launch on the Macintosh than on a comparable PC. It has been shown that Netscape browsers perform slower on Windows than MS Internet Explorer; even controlling for relative speeds on the Macintosh (the only other platform available for browser comparison) there was nowhere near the discrepancy. Apple's Quicktime software, after installation of Windows Media Player (Microsoft's competing media software), was found to stop working.

On Conspiracy Theories:

Personally I generally regard conspiracy theories with contempt. One day my brain was on autopilot, however, and I thought of a few interesting "coincidences".

Microsoft was well into the proceedings of the Antitrust trial in May of 1998 when it decided to invest \$150 million in non-voting Apple stock and promise Microsoft Office for the Apple Macintosh five years. The advantages:

- * Keeps the only real competitor alive for as long as necessary (five years is plenty of time to get the main Antitrust trial over). Apple, without Microsoft's Office suite of software, would slowly but surely go out of business.

- * As a bonus, they look benevolent, keeping a struggling company alive. Apple, at the time, had over \$2 BILLION in its cash reserves. They hardly needed an influx of 7.5%.

- * Microsoft continues to receive quite a bit of revenue from Office for the Mac-certainly more than enough to warrant its development. They would most likely continue to develop Office for the Mac anyway. Of course, this does not preclude Microsoft from approaching Apple and saying "If you do not set Explorer as the default browser on your Macintosh machines, we will stop making Office for your Mac OS." [Paraphrased from court documents.]

- * Instant riches: \$150 million doubled overnight, and today that investment is worth around \$450 million.

- * Microsoft and Apple settled on numerous instances of patent-infringement litigation for an undisclosed sum. Reports commonly say around \$300-\$500 million, but were worth more than \$2 billion (source: Gil Amelio, ex-CEO of Apple).

- * Best of all, they had no long term commitment-they are free to stop making Office for the Macintosh in May 2003, roughly the expected date of the end of the antitrust trial.

On the note of conspiracy theories, a fringe theory: Judge Jackson was widely regarded as an even handed official, with (if any) a tendency to favor capitalism and less government intervention. It struck me as very odd that he ruled against Microsoft, conducted himself in a manner very unbecoming of an officer of the court (belittling witnesses, speaking to the media about the case extensively before and after the ruling, etc.). He should have known about the appearance of impropriety it would create

and how it would negatively affect his rulings on the case. If he were a lesser man, I would be inclined to think that he handed down the worst judgment he could think of, knowing that it would be tossed out and replaced with a lesser penalty. Microsoft, knowing about the actions of this lesser man (than the Hon. Jackson), would be comforted that their biggest fear (being split into two or more companies) would not come true because of this conduct.

Thank you very much for your time and attention. I appreciate living in a society where my opinion matters and is heard.

All the best,

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